

Something (else) for Trustees to worry about

In June, the Charity Commission issued Guidance for Higher Education Institutions ('HEIs') that conduct research¹. The Guidance explicitly applies to HEIs but it is relevant to any charity that funds research.

The Charities Act 2006 removed the presumption that the advancement of education is for the public benefit. Research is only a charitable activity if it is for a charitable purpose and the useful results of the research will be disseminated.

The Guidance helps to illustrate what qualifies as charitable research.

Research that is not charitable may be a fundraising activity. A charity cannot perform a non-charitable trading activity and would have to act through a subsidiary or third party. Such activity will not be tax exempt.

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be immediate but can be 'within a normal academic timeframe'.

Dissemination is required even where the research involved has commercial sponsorship. If the

If the private benefit is not incidental then the research is not in furtherance of the charity's aims and the Trustees may be in breach of their duties by permitting the charity's resources to be used for it.

The Guidance envisages that the dissemination of the useful knowledge that the research produces will constitute a sufficient benefit for the public. The Commission will take a broad view of what is adequate dissemination. For example, publication need not

commercial partner refuses to allow for publication, it will be difficult for such research to be treated as charitable.

What makes research charitable?

According to the Guidance, if research is to be classified as charitable, certain conditions must be satisfied:

- the research must be calculated to promote in a meaningful way the charitable aims of the charity. In the context of HEIs, this will typically involve advancing or enhancing knowledge and understanding for the public benefit.
- the useful knowledge acquired as a result of the research should be disseminated to others. The knowledge needs to be available or accessible whether by publication or by the practical application of the knowledge but it does not have to have an immediate practical application in order to qualify as 'useful'.
- the research must be conducted for the benefit of the public and not solely or mainly for self-interest or private or commercial consumption. Public benefit is considered below.

What is "public benefit" and what is "private benefit"?

Every charity must promote aims that are for the public benefit. This benefit must be identifiable and must be 'public' in the sense that the beneficiaries are appropriate to the charity's aims and are not unreasonably restricted whether by poverty or otherwise.

Private benefit is any benefit that a person receives 'other than as a beneficiary' of the charity – for example, early or exclusive access to research findings. Where the private benefit is incidental, the activity as a whole may still qualify as charitable. An 'incidental benefit' is a necessary by-product. To be legitimately incidental, it must be: a necessary consequence of pursuing the charity's aims; reasonable in terms of the relative amount of private benefit as against public benefit; and, in the interests of the charity.

The registration of intellectual property rights may suffice as dissemination, as registration can involve publication. Alternatively, the results may be available for use in further research or the products that arise from the research may be commercially exploited – so the results are applied for the public benefit (from the new product) and the charity has a financial return.

Is the commercialisation of results permitted?

Yes. Exploiting the results of the research does not necessarily disqualify the research from being charitable. A charity may charge for access to results provided that the charges are reasonable and that they do not effectively deny access to large sections of the public. Permitting access only to those lucky few that can afford it, is not sufficient. The Guidance contemplates the exploitation of arising intellectual property. The funding charity need not own the intellectual property but should take reasonable steps to protect the charity's interest in the intellectual property by retaining an appropriate degree of control over its use and receiving a proper share of the benefits.

What should Trustees do?

By way of (some) comfort to Trustees, the Guidance promises to take a broad view. Provided the Trustees can demonstrate that robust procedures are in place and that decisions that reflect the charity's aims are reasonable and within the Trustees' powers and remit, then the Commission will only rarely intervene. Trustees should therefore:

- only act within their powers and in furtherance of the charity's aims;
- ensure that research is for the public benefit and results are disseminated;
- if necessary, introduce an appropriate structure to protect the charity's status.

¹Charity Commission Guidance: Research by Higher Education Institutions, June 2009